IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 152 OF 2005

WITH

WRIT PETITON NO. 153 OF 2005

WITH

WRIT PETITON NO. 155 OF 2005

WITH

WRIT PETITON NO. 156 OF 2005

RANJANA C. DHURU & ORS. ... PETITIONERS

Versus

BAI MANIBEN MEGHJI TRUST & ORS. .. RESPONDENTS

Mr. Y. S. Jahagirdar, Sr. Counsel with S. H. Joshi for petitioners

Mr. V. B. Naik with Ravi Gandhi , Nandini Gidwaney i/b M/s. Kanga & Co. for respondents

CORAM:-SMT. RANJANA DESAI, J.

DATED:-23-2-2005

**P.C.**

These group of petitions can be disposed of by a common order because they arise out of same proceedings and they involve the same parties. The petitioners are original obstructionists 1 to 3. The respondents are trustees of Bai Maniben Meghji Trust and they are the original plaintiffs. For the sake of convenience the parties are referred to in this order as per their status in the suit.

2. The plaintiffs filed a suit against defendant 1 Ramchandra Pandit, defendant 3 Ramanand Pandit, defendant 2, i.e. the unknown heirs of Laxmibai Pandit and the Court Receiver for eviction on the grounds of arrears of rent of block Nos. 5-A, 9, 10 and 7 of building known as Meghji Bhavan, situate at 1-A, Barrack Road, Opposite Metro Cinema, Dhobi Talao, Mumbai (suit premises). The suit was decreed on 3-4-76. Appeal preferred by defendant 4 was dismissed for want of prosecution. Appeal preferred by defendant 3 was dismissed by Small Causes Court on 11/6/1987. The writ petition filed by defendant 3 in this court was dismissed on 24/9/87. Defendant 3 filed Special Leave Petition in the Supreme Court which came to be rejected on 29/1/88.

3. The plaintiffs took out execution proceedings. The

petitioners/obstructionists 1 to 3 respectively obstructed the execution. Obstructionist 1 is one R. L. Dhuri, Obstructionist 2 is Ranjana Dhuri and Obstructionist 3 is Ramdular Pandit. Obstructionist 1 adopted the affidavit of obstructionist 2. Notice taken out by the plaintiffs for removal of obstruction was made absolute by the trial court on 7/9/98. Appeal filed by the obstructionists was dismissed by the lower appellate court and hence this petition.

4. I have heard at considerable length Mr. Jahagirdar, learned counsel appearing for the obstructionists. Before I deal with the rival contentions, few facts may have to be noted.

5. According to obstructionist 2, deceased Smt. Laxmibai Pandit was conducting a hotel in the name and style of Sind Punjab Hotel since the year 1943. Defendant 3 Ramanand Pandit, Obstructionist 3 Ramdular Pandit, who are brothers were helping her. Petitioner 2 and Laxmibai were disciples of Guru Raghunathji.

6. It is the case of obstructionist 2 that she was brought up by Laxmibai and Laxmibai adopted her as a daughter. One C. S. Dhuru was introduced to obstructionist 2 and in the year 1952 they got married. According to obstructionist 2 though she was residing with her husband, she used to come and reside with deceased Laxmibai. Laxmibai died in the year 1966. It is the case of obstructionist 2 that at the time of death, Laxmibai had

expressed a desire that obstructionist 2, defendant 3 and obstructionist 3 should lookafter her hotel business. It was her desire that they should enter into partnership and, therefore, a partnership deed was executed on 9/4/1966 between obstructionist 2, defendant 2 and obstructionist 3. There were some disputes between the parties and, therefore, obstructionists filed a suit for dissolution and accounts of the partnership firm in the City Civil Court at Bombay. That suit was decreed on 9/12/87. The partnership stood dissolved from 28/1/70. Defendant 3 carried an appeal from that judgment and decree in this court being Appeal No. 236 of 1988. In that appeal consent terms were filed on 26/2/88. As per the consent terms defendant 3 gave up his claim. It is the case of obstructionist 2 that from 26/2/88 obstructionists 2 and 3 have entered into a partnership with one Ramarao in respect of the hotel business. The obstructionists thus claim an independent right in the suit premises being partners of a firm doing business in the suit premises. According to the obstructionists the tenancy rights vest in the partnership firm.

7. The trial court while making the notice absolute held that the decree of eviction passed in favour of the plaintiff in a suit for eviction was confirmed upto the Supreme Court. Therefore, the finding recorded by the trial court in that case that adoption of obstructionist 2 by Laxmibai was not proved; that the partnership was a dubious partnership; that defendant

3's claim that he is the heir and representative of deceased Laxmibai is dubious was confirmed upto the Supreme Court. The trial court held that, therefore, obstructionist 3 who is the brother of defendant 3 cannot have a better claim than defendant 3. The trial court also held that in the partnership deed parties have agreed to obtain succession certificate as regards Laxmibai's property. However, obstructionist 2 has not obtained any such certificate. This view of the trial court was confirmed by the lower appellate court.

8. Mr. Jahagirdar, learned counsel for the obstructionists contended that the suit for dissolution of partnership filed by obstructionist 2 against defendant 3 and obstructionist 3 was decreed on 9/12/87. In that suit obstructionist 2 came up with a contention that the partnership was merely a security for a loan advanced by Solicitor Shri Dhuri. However that claim came to be rejected and it was held that the partnership was a genuine partnership. In the appeal filed in the High Court the parties filed consent terms and, therefore, the finding of the trial court that the partnership is genuine was confirmed. He, therefore, submitted that the courts below were wrong in coming to a conclusion that the partnership was in any way dubious because this court has confirmed the finding that it is genuine.

9. Mr. Jahagirdar further urged that the tenancy now vests in the partnership

firm and the partnership firm ought to have been joined as party defendant in the suit filed by the plaintiffs. Inasmuch as the partnership firm was not joined in the suit, the decree obtained by the plaintiffs cannot be executed against the partnership firm. Mr. Jahagirdar also urged that the tenants of the said building have formed a society and the property in question is now acquired by MHADA and it vests in MHADA., as per Section 103 of the Maharashtra Housing and Area Development Act, 1976. He submitted that therefore, by reason of statutory intervention the plaintiffs have been divested of their rights and, therefore, the decree cannot be executed.

10. As against this Mr. Naik, learned counsel for the respondents contended that the courts below have rightly held that the partnership is dubious. He pointed out that Laxmibai died on 27/3/66 and the deed of partnership was executed on 9/4/66. It appears to have been prepared on ¼/66. Therefore, within a period of five days after the death of Laxmibai this so-called partnership deed was executed. He submitted that this casts a shadow of doubt on this partnership deed.

11. The learned counsel further pointed out that the suit filed by obstructionist 3 in the City Civil Court for dissolution of partnership is collusive. There is apparent collusion between obstructionist 2 and defendant 3 and obstructionist 3. This suit was decreed on 9/11/87 and Consent Terms

were filed on 26/2/88. However, prior to that on 29/1/88 the Special Leave Petition filed by defendant 3 was dismissed by the Supreme Court. Thus it was confirmed that defendant 3 was not the legal heir of Laxmibai and that the so-called adoption of obstructionist-2 by Laxmibai is not proved. This fact was not pointed out to the High Court when the consent terms were filed.

12. Mr. Naik also drew my attention to the judgment of Justice Daud in Writ Petition No. 4221 of 1987 filed by defendant 3 challenging the judgment of the Small Causes Court in R.A.E. Suit No. 1688 of 1967 filed by the plaintiff for eviction and the judgment in Appeal No. 383 of 1967 decided by the Small Causes Court arising out of the said judgment.

13. It is significant to note that while considering the case of defendant 3 Justice Daud has observed as under:

> "Petitioner came forth with the plea that he was Laxmibai's brother and had stayed and worked with her. The statutory courts have considered all facets of the evidence led by parties to hold against the petitioner. That is enough to preclude recourse to this court in exercise of the writ jurisdiction. But that apart, it does appear that finding Laxmibai to be dead and without heirs the petitioner on his own or upon the advice of others

> who also wanted to benefit, set up the false plea of being entitled to succeed to the rights of Laxmibai as her heir. The evidence on record has been scrutinised in detail by the statutory Courts and the depositions referred to by the appellate court fortify the suspicion that the claim put forward by the petitioner is a trumped up one."

He, therefore, submitted that a totally false case is put up by the obstructionists and hence no interference is called for with the impugned judgment.

13. In my opinion the defendants have not made out any case warranting interference by this court with the impugned judgment and decree.

14. The claim of defendant 2 that she is an adopted daughter of deceased Laxmibai, in my opinion is rightly rejected by the trial court. In fact that view has been confirmed upto Supreme Court. Similarly claim of defendant 3 that he is the legal heir and representative of deceased Laxmibai has also been rejected by the trial court and that view has been confirmed by the Supreme Court. The deed of partnership dated 9/4/66 has also been rightly held to be dubious. Admittedly it is prepared and executed within a period of five days after the death of Laxmibai. The story that it was Laxmibai who desired that defendant 2 along with

defendant 3 and obstructionist 3 should carry on with the business appears to be a got up story. Besides in Suit No. 1043 of 1970 the present plaintiffs are not a party. Consent Terms were filed in this court in which defendant 3 is said to have given up his claim. However, a very vital fact that the Special Leave Petiton filed by defendant 3 came to be rejected on 29/1/1988 was not brought to the notice of this court. Therefore, the said consent terms in that case will not bind the plaintiffs who were not parties to those proceedings. The observations of the learned Single Judge of this court in the petition filed by defendant 3 which I have quoted hereinabove will also have to be borne in mind while considering the claim of the obstructionists. Viewed from this angle, in my opinion, it is clear that the obstructionists have come out with a totally false claim. So far as the acquisition of the suit property by MHADA is concerned, I am informed that this is not an acquisition by MHADA but the trust has conveyed the properties to the tenants and admittedly in respect of the tenaments occupied by the obstructionists no conveyance has been executed by the landlord. Mr. Naik pointed out that there is a specific clause to that effect in the conveyance executed by the landlord. In any case the obstructionists who have absolutely no right to obstruct the decree cannot be allowed to raise such objections.

15. In view of the above, in my opinion, all these petitions deserve to be

dismissed and are dismissed as such.

16. At this stage the learned counsel for the petitioner says that the petitioners are desirous of approaching the Supreme Court and hence the impugned decree be stayed for some time. Mr. Naik, learned counsel for the respondents strongly objects. However, in the circumstances of the case execution of the decree is stayed for a period of six weeks from today, on the petitioners filing usual undertakings in this court within a period of two weeks from today.

17. Certified copy expedited.